

COATS | ROSE

A Professional Corporation

Item # 36

JOHN M. JOSEPH

Direct Dial
512.541.3593

March 27, 2015

VIA EMAIL

Greg Guernsey, Director
Planning & Development Review Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

RE: Cantarra Mixed Use; C14-2014-0167
City Council Meeting Postponement Request

Dear Mr. Guernsey:

On behalf of our client, Cantarra Ventures, Ltd., we formally request a postponement of Case Number C14-2014-0167 from the April 2, 2015, City Council hearing. We request a minimum of a two-week postponement. The applicant's zoning request raises troubling legal questions that we would like to explore with Staff and the Legal Department.

The subject tract sits at the intersection of East Howard Lane and Cantarra Drive, at the entrance to the Cantarra subdivision, a small-lot, residential subdivision developed by Cantarra Ventures, Ltd. Cantarra Ventures holds a 50-foot landscape easement across the tract, as shown on Exhibit "A". Cantarra Ventures acquired this easement in 2006 in conjunction with its development of the Cantarra subdivision. The easement gives Cantarra Ventures the explicit right to place a fence, screening and other landscaping improvements in the easement area. Cantarra Ventures currently uses the rights afforded by the easement for vital marketing and branding improvements, including subdivision monuments.

The applicant's zoning application includes an unorthodox request for a conditional overlay that would prohibit a fence within 50 feet of Cantarra Drive and East Howard Lane. This, not coincidentally, is the precise area covered by Cantarra Ventures' easement. The requested overlay is an attempt to extinguish Cantarra Ventures' easement rights while preserving the applicant's right to build a fence on the remainder of the tract. Applicant has not reached out to Cantarra Ventures to attempt to negotiate the release of the easement.

Barton Oaks Plaza, 901 South MoPac Expressway, Building 1 Suite 500, Austin, Texas 78746

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4852-3901-1362.v1

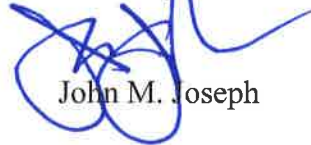
March 27, 2015

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Needless to say, we are troubled by Staff's apparent willingness to abet this attempt to extinguish privately negotiated and valuable easement rights. Cantarra Ventures intends to assert all of its rights to protect its easement rights, including its rights under Section 43.002 of the Texas Local Government Code, its vested rights under Chapter 245 of the Local Government Code, and its right to be compensated for regulatory takings under the United States and Texas Constitutions.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "John M. Joseph", is written over the typed name. The signature is stylized with loops and a long horizontal stroke extending to the right.

John M. Joseph

cc: Sherri Sirwaitis, Case Manger
Jerry Rusthoven, Manager

LANDSCAPE EASEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

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THAT Compass Bank, successor by merger to Horizon Bank and Trust, SSB, as Custodian for the Robert E. Johnson, Jr. SEP IRA Account and the Gordon R. Johnson SEP IRA Account, hereinafter called "Grantor", for and in consideration of the sum on Ten Dollars and 00/100 (\$10.00) and other good and valuable consideration, to Grantor in hand paid by Cantarra Ventures, Ltd., Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to Grantee and its assigns hereinafter called "Grantee", the easement and right of ingress and egress upon and across the real property located in Travis County, Texas, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference as if fully set forth herein, the "Easement Property", for the purpose of and with the unrestricted right to install, construct, maintain, repair and replace landscaping, screening and all related improvements thereon, including without limitation, irrigation, drainage improvements, turf, berms, trees, shrubs, annual and perennial plantings, ground cover, signage, monuments, fencing, retaining wall(s), and similar landscape or screening improvements (the "Facilities") within the Easement Property.

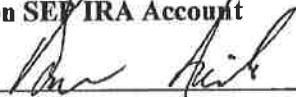
TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, and Grantor hereby binds Grantor, together with its successors and assigns, to warrant and forever defend this easement and the rights granted herein unto Grantee, its successors and assigns against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof, by, through, or under Grantor, but not otherwise. Further, Grantor does hereby grant to Grantee the right and privilege at all times to enter the Easement Property, or any part thereof, and with the right of access across Grantor's adjacent property for ingress and egress to the Easement Property as is reasonably necessary for the purpose of constructing, installing, operating, maintaining, replacing, upgrading and repairing said Facilities, and all incidental improvements.

This Easement may be assigned in whole or in part.

EXECUTED this 13 day of April, 2006.

GRANTOR:

Compass Bank, successor by merger to Horizon Bank and Trust, SSB, as Custodian for the Robert E. Johnson, Jr. SEP IRA Account and the Gordon R. Johnson SEP IRA Account



By: Bruce Irick

Its: Senior Vice President

STATE OF TEXAS

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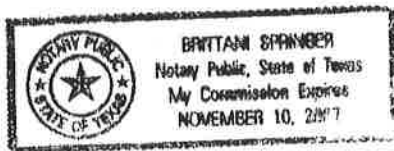
COUNTY OF TRAVIS

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Before me on this day personally appeared Bruce Luck
of Compass Bank, known to me to be the person whose name is subscribed to the
foregoing instrument; and he/she acknowledged to me that Compass Bank, successor by merger to
Horizon Bank and Trust, SSB, is the Custodian for the Robert E. Johnson, Jr. SEP IRA Account and
the Gordon R. Johnson SEP IRA Account, and he/she executed said instrument for the purposes and
consideration therein expressed on behalf of said parties.

Given under my hand and seal of office this 13th day of April, 2006.



Brittani Springer
Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

Cantarra Ventures, Ltd.
1401 Burnham Drive
Plano, Texas 75093

RETURN TO:
ALAMO TITLE COMPANY
901 S. MOPAC EXPRESSWAY
BLDG. III, SUITE 100
AUSTIN, TEXAS 78746-5776

GF# 06-1310998-12

EXHIBIT "A"

0.717 ACRE (31,234 SQUARE FEET)
50' WIDE LANDSCAPE EASEMENT
MARIGUITA CASTRO LEAGUE SURVEY NO. 50, ABSTRACT NO. 160
TRAVIS COUNTY, TEXAS

FIELD NOTES

BEING ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF AND A PART OF THE MARIGUITA CASTRO LEAGUE SURVEY NO. 50, ABSTRACT 160 SITUATED IN TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED AS 145.072 ACRES, CONVEYED TO HORIZON BANK AND TRUST, S&B IN VOLUME 12839, PAGE 1191 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING 0.717 ACRE OF LAND MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at an iron rod found in the north right-of-way line of Gregg Lane, at the most southerly corner of said Horizon Bank tract, being also the most westerly corner of that certain tract of land described as 24.906 acres, conveyed to Ada M. Ellison in Volume 11688, Page 462 of the Real Property Records of Travis County, Texas, for the **POINT OF COMMENCEMENT**,


THENCE, with the north right-of-way line of said Gregg Lane, being also the south line of said Horizon Bank tract, N59°22'39"W, a distance of 265.21 feet to a point,

THENCE, departing the north right-of-way line of said Gregg Lane, and crossing said Horizon Bank tract, N30°36'38"E, a distance of 39.94 feet to an iron rod set for the **POINT OF BEGINNING** of the herein described tract,

THENCE, continuing across said Horizon Bank tract, the following eight (8) courses and distances, numbered 1 through 8;

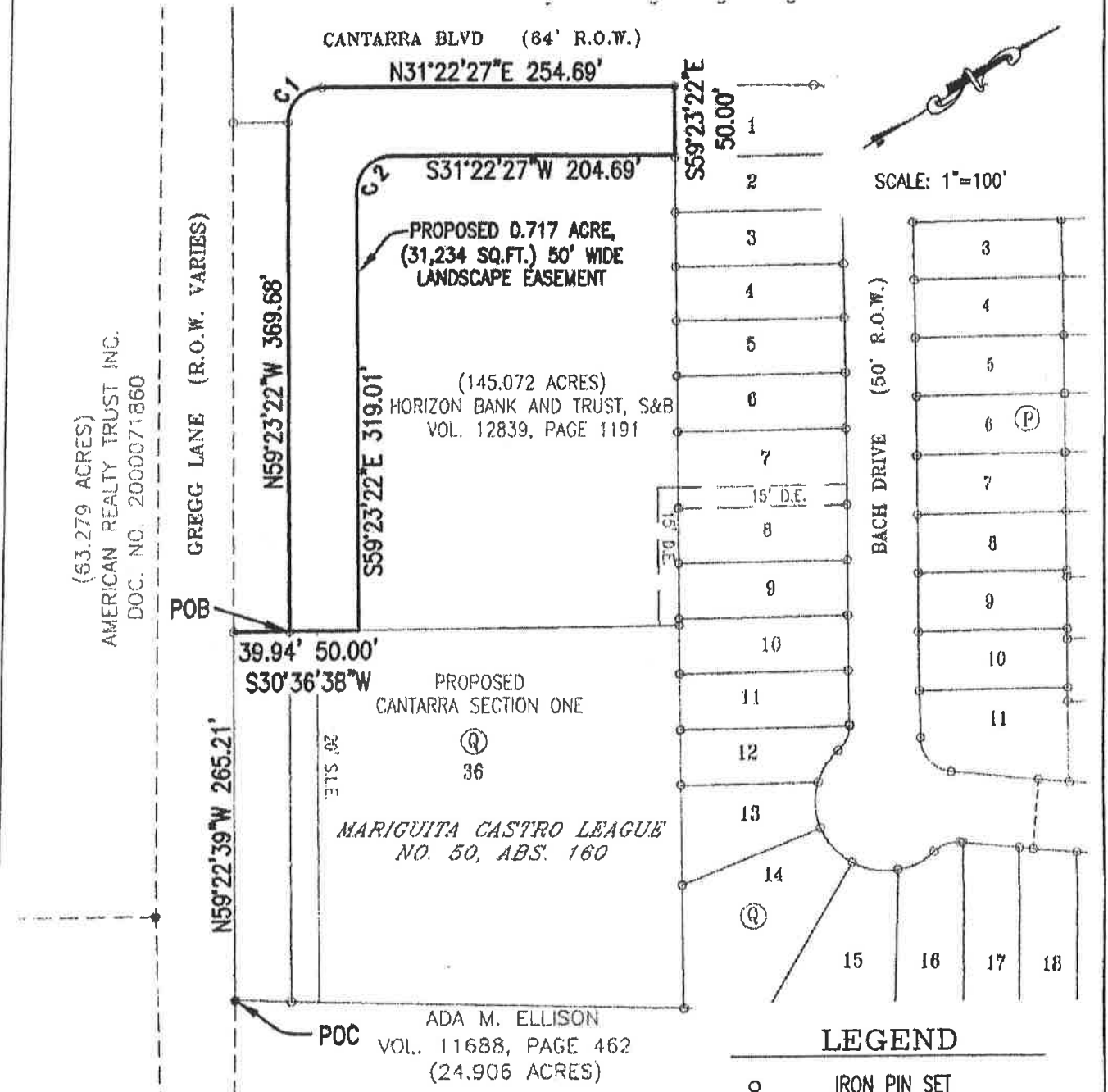
1. N59°23'22"W, a distance of 369.68 feet to an iron rod set,
2. with a curve to the right having a radius of 25.00 feet, an arc length of 39.60 feet and whose chord bears, N14°00'27"W, a distance of 35.59 feet to an iron rod set,
3. N31°22'27"E, a distance of 254.69 feet to an iron rod set,
4. S59°23'22"E, a distance of 50.00 feet to an iron rod set,
5. S31°22'27"W, a distance of 204.69 feet to a point,
6. with a curve to the left having a radius of 25.00 feet, an arc length of 39.60 feet and whose chord bears, S14°00'27"E, a distance of 35.59 feet to a point,
7. S59°23'22"E, a distance of 319.01 feet to a point, and
8. S30°36'38"W, a distance of 50.00 feet to the **POINT OF BEGINNING** and containing 0.717 acre of land.

Prepared By:


Thomas J. Dodd, ~ R.P.D.S. No. 1882
CARLSON, BRIGANCE & DOERING, INC.
3401 Slaughter Lane West
Austin, Texas 78748
(512) 280-5160 Fax: (512) 280-5165



SKETCH TO ACCOMPANY FIELD NOTES



CURVE TABLE						
CURVE	RADIUS	ARC	BEARING	CHORD	TANGENT	DELTA
C1	25.00'	39.60'	N14°00'27"W	35.59'	25.34'	90°45'49"
C2	25.00'	39.60'	S14°00'27"E	35.59'	25.34'	90°45'49"

Carlson, Brigance & Doering, Inc.
 Civil Engineering • Surveying
 3401 Slaughter Lane West • Austin, Texas 78748
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PATH:- J:\AUTOCAD2004LP\4198\DWG\ESMT-LSE.DWG

- ## LEGEND
- IRON PIN SET
 - IRON PIN FOUND
 - P.U.E. PUBLIC UTILITY EASEMENT
 - D.E. DRAINAGE EASEMENT
 - S.L.E. SIGHT LINE EASEMENT
 - 1 LOT NUMBER
 - (A) BLOCK NUMBER
 - EASEMENT LINE
 - POB POINT OF BEGINNING
 - POC POINT OF COMMENCEMENT